

Update: Adoption Proceedings Benchbook

CHAPTER 3

Identifying the Father

3.7 Acknowledgment of Parentage

D. Revocation of Acknowledgment

3. Court Determination

On page 96, at the end of the second full paragraph, add the following text:

In *Killingbeck v Killingbeck*, ___ Mich App ___, ___ (2005), plaintiff resided with defendant prior to the birth of her son. Plaintiff acknowledged having a relationship with another man, Rosebrugh, during this same time period. Plaintiff continued to reside with defendant after the birth of her son, and defendant signed an acknowledgment of parentage, acting as the child's father for the first four years of his life. Plaintiff and defendant subsequently married, but shortly thereafter, plaintiff filed for divorce. Plaintiff then contacted Rosebrugh and arranged for genetic testing, which confirmed that Rosebrugh, not defendant, was the child's biological father. One year later, plaintiff and Rosebrugh filed a paternity action seeking to revoke defendant's acknowledgement of parentage. In the interim, the judgment of divorce listed the minor child as a child of plaintiff and defendant.

Plaintiff, defendant, and Rosebrugh initially reached an agreement that was reduced by the trial court to orders revoking defendant's acknowledgement of parentage and amending the child's birth certificate. The trial court also ordered that defendant continue to have the rights of a *de facto* father. Rosebrugh, after being permitted to intervene in plaintiff and defendant's divorce action, sought to set aside the prior court orders and terminate all of defendant's legal rights and responsibilities to the minor child, arguing, based on the genetic determination of paternity, that no legal basis existed for defendant to assert parental rights. Ultimately, the trial court entered an order in the paternity action removing defendant as a party and terminating his parental rights. Rosebrugh and plaintiff were granted joint custody, with sole physical custody to plaintiff. Rosebrugh and defendant were each ordered to

have specific, separate parenting time, and Rosebrugh was ordered to pay child support.

On appeal, the *Killingbeck* Court determined, based on *Van v Zahorik*, 460 Mich 320 (1999), that reliance upon the equitable parent or equitable estoppel doctrines to grant defendant parenting time was foreclosed because the child was not “born or conceived during the marriage.” To the extent the trial court relied on these doctrines to grant defendant parenting time, the order was entered in error. The *Killingbeck* Court vacated the order revoking defendant’s acknowledgement of parentage because it was not warranted by the equities of the case, MCL 722.1011(3), and because it was based on a mistake of law by the trial court. The Court also reversed the order granting defendant parenting time as a *de facto* father. The matter was remanded to the trial court because the equities of the case justified defendant’s continuing right to parenting time and, had it not erred in its understanding and application of the law, the trial court might have weighed the equities of the case differently if it had realized that revocation of defendant’s acknowledgement of parentage would preclude his right to parenting time with the minor child.

Update: Adoption Proceedings Benchbook

CHAPTER 3

Identifying the Father

3.7 Acknowledgment of Parentage

D. Revocation of Acknowledgment

3. Court Determination

On page 96, at the end of the second full paragraph, add the following text:

In *Killingbeck v Killingbeck*, ___ Mich App ___, ___ (2005), plaintiff resided with defendant prior to the birth of her son. Plaintiff acknowledged having a relationship with another man, Rosebrugh, during this same time period. Plaintiff continued to reside with defendant after the birth of her son, and defendant signed an acknowledgment of parentage, acting as the child's father for the first four years of his life. Plaintiff and defendant subsequently married, but shortly thereafter, plaintiff filed for divorce. Plaintiff then contacted Rosebrugh and arranged for genetic testing, which confirmed that Rosebrugh, not defendant, was the child's biological father. One year later, plaintiff and Rosebrugh filed a paternity action seeking to revoke defendant's acknowledgement of parentage. In the interim, the judgment of divorce listed the minor child as a child of plaintiff and defendant.

Plaintiff, defendant, and Rosebrugh initially reached an agreement that was reduced by the trial court to orders revoking defendant's acknowledgement of parentage and amending the child's birth certificate. The trial court also ordered that defendant continue to have the rights of a *de facto* father. Rosebrugh, after being permitted to intervene in plaintiff and defendant's divorce action, sought to set aside the prior court orders and terminate all of defendant's legal rights and responsibilities to the minor child, arguing, based on the genetic determination of paternity, that no legal basis existed for defendant to assert parental rights. Ultimately, the trial court entered an order in the paternity action removing defendant as a party and terminating his parental rights. Rosebrugh and plaintiff were granted joint custody, with sole physical custody to plaintiff. Rosebrugh and defendant were each ordered to

have specific, separate parenting time, and Rosebrugh was ordered to pay child support.

On appeal, the *Killingbeck* Court determined, based on *Van v Zahorik*, 460 Mich 320 (1999), that reliance upon the equitable parent or equitable estoppel doctrines to grant defendant parenting time was foreclosed because the child was not “born or conceived during the marriage.” To the extent the trial court relied on these doctrines to grant defendant parenting time, the order was entered in error. The *Killingbeck* Court vacated the order revoking defendant’s acknowledgement of parentage because it was not warranted by the equities of the case, MCL 722.1011(3), and because it was based on a mistake of law by the trial court. The Court also reversed the order granting defendant parenting time as a *de facto* father. The matter was remanded to the trial court because the equities of the case justified defendant’s continuing right to parenting time and, had it not erred in its understanding and application of the law, the trial court might have weighed the equities of the case differently if it had realized that revocation of defendant’s acknowledgement of parentage would preclude his right to parenting time with the minor child.